

Salisbury, North Carolina
April 16, 2019

REGULAR MEETING

PRESENT: Mayor Al Heggins Presiding; Mayor Pro Tem David Post; Council Members Karen Alexander, William Brian Miller, and Tamara Sheffield; City Manager W. Lane Bailey; City Clerk Diane Gilmore, and City Attorney J. Graham Corriher.

ABSENT: None.

Salisbury City Council met in Council Chambers in City Hall located at 217 South Main Street. The meeting was called to order by Mayor Heggins at 6:00 p.m.

ALTERATIONS TO THE AGENDA

Mayor Heggins noted the following changes to the Agenda:

Revisions – Revisions to page 12 of the Minutes of April 2, 2019, to remove unsworn testimony from Mr. Steven Kyle. Mr. Bailey noted the wrong name is reflected and Mr. Steve Cobb is who testified. City Attorney Graham Corriher recommended the testimony remain in the minutes and be identified as an unsworn testimony. Councilmember Sheffield stated the name Steven Kyle should be changed to “Steve Cobb” to reflect the correct person who provided unsworn testimony.

Add – Hold a public hearing for Agenda Item 13a, Chapter 22 addressing Public Demonstrations.

Add – An announcement for the Dixonville-Lincoln Memorial Task Force “Ministers of Comedy and Judges” on Thursday, April 25, 2019 at Salisbury Civic Center.

Add – An announcement regarding rescheduling the Salisbury Parks and Recreation Department 13th annual Touch a Truck event on Saturday, May 4, 2019.

Councilmember Sheffield asked if a public hearing notice should have been published relating to the Chapter 22 public hearing. City Clerk Diane Gilmore confirmed the public hearing was advertised. Mr. Corriher commented Ordinance changes do not require a public hearing. He noted the public hearings held for Ordinances are based on practices by Council.

Mayor Heggins suggested the unsworn testimony provided by Mr. Cobb at the previous meeting not be considered when Council makes its decision but be reflected in the minutes. She asked if there are additional pieces of evidence that should not be considered that are included in the minutes. Mr. Corriher commented what Council considers in its findings will be reflected in the minutes from today's meeting, and the April 2, 2019 minutes will reflect what took place during that meeting. He commented Council cannot rely on unsworn testimony to make finding of facts.

Councilmember Miller asked if Council would include a statement during the Special Use Permit (SUP)-02-2019 portion of the meeting that would reflect what finding of facts Council relied on to make a decision. Mr. Corriher agreed.

Mayor Heggins asked if Mr. Cobb would be sworn in during SUP-02-2019. Mr. Corriher recommended Council consider additional factual evidence from anyone who opposes the SUP-02-2019 permit. He noted because there was a recording issue due to the large number of participants sworn in at the last meeting he recommends administering oaths one at a time.

Mayor Pro Tem Post commented the Minutes provides a list of participants who received an oath, and he asked if Mr. Cobb should be removed from that list. Ms. Gilmore stated Mr. Steve Cobb did not receive an oath. Mr. Corriher clarified everyone was sworn in at once and names were not taken at the meeting. He commented that the list was created based on those who spoke during the public hearing.

A moment of silence was taken.

PLEDGE OF ALLEGIANCE

Mayor Heggins led those present in the Pledge of Allegiance to the United States flag.

ADOPTION OF THE AGENDA

Thereupon, Mayor Pro Tem Post made a **motion** to adopt the Agenda with the presented revisions and changes. Mayor Heggins, Mayor Pro Tem Post and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

PROCLAMATION

Mayor to proclaim the following observance:

KITE FESTIVAL

APRIL 19, 2019

Mayor Heggins read and presented the Kite Festival Proclamation to Ms. Gwendolyn Jackson, Pastor Leamon Brown and his wife.

Ms. Jackson announced the Kite Festival has been rescheduled to Saturday, May 4, 2019 at noon at First Calvary Baptist Church, 400 South Long Street due to the severe weather forecasted for Friday, April 19, 2019.

CONSENT AGENDA

(a) Minutes

Adopt Minutes of the Special Meeting of April 2, 2019 and the Regular Meeting of April 2, 2019.

(b) Right-of-Way – AT&T

Approve a request from AT&T to install fiber cable along Nesbitt, Sunset, and Cottage Drives, and Raymond Avenue in accordance with Section 11-24 (27) of the City Code. Proposed lashing 3165' over existing strand and directionally boring of 143' along Nesbitt Drive.

(c) Chapter 13 Section 13-338 Parking Amendment

Adopt an Ordinance amending Chapter 13, Article X, Section 13-338 relating to Parking Restrictions, of the City Code.

ORDINANCE AMENDING CHAPTER 13, ARTICLE X, OF THE CODE OF THE CITY OF SALISBURY, RELATING TO PARKING.

(The above Ordinance is recorded in full in Ordinance Book No. 28 at Page No. 52, and is known as Ordinance 2019-18.)

(d) Right-of-Way Use Permit

Approve a Right-of-Way Use Permit for two parking spaces adjacent to 204 South Main Street for 30 calendar days in accordance with Section 22-50 of the City Code.

Mayor Pro Tem Post pointed out the right-of-way (ROW) request is from AT&T to install cable along four streets in Salisbury. He referenced House Bill 431 that was drafted by the North Carolina Legislature that relates to municipalities building infrastructures lease to private sector parties, and he noted AT&T is opposed to the bill. He indicated he would be opposed to the bill. Councilmember Sheffield asked if Mayor Pro Tem Post is requesting the item be removed from the Consent Agenda. Mayor Pro Tem Post agreed, and he suggested Council have a discussion.

Councilmember Miller stated it is his understanding that the City must grant the ROW request.

City Manager Lane Bailey pointed out various utility lines are currently in place and the North Carolina Department of Transportation (NCDOT) would need to share the ROW. He stated he understands Mayor Pro Tem Post's concerns, but the utility company could remove services to the City.

Mayor Heggins asked if there would be an interference with the public's right to have a choice in service providers by not permitting the ROW. Mr. Bailey agreed, and he noted there are other services such as Hotwire Communications versus current providers.

Thereupon, Councilmember Miller made a **motion** to adopt the Consent Agenda as presented. Mayor Heggins and Councilmembers Alexander, Miller, and Sheffield voted AYE. Mayor Pro Tem Post voted NAY. (4-1)

PUBLIC COMMENT

Mayor Heggins asked City Attorney Graham Corriher if participants who wish to speak about Special Use Permit (SUP) 02-2019 could be sworn in during the Agenda item related to SUP-02-2019. Mr. Corriher agreed, and he clarified an opportunity would be available during the SUP-02-2019 hearing for participants to offer factual evidence and no opinions. Mayor Heggins announced anyone who has an opinion about Grievous Gallery should sign in to speak during public comment. Mr. Corriher pointed out statement topics provided during public comment cannot be regulated by Council, and he recommended Council not consider comments provided during public comment as part of the SUP.

Mayor Heggins opened the floor to receive public comments.

Mr. James White commented he would like to have an IGA grocery store, Red Lobster and Mayflower restaurants in Salisbury.

Ms. Elaine Hewitt stated she supports keeping the Confederate monument where it stands and to not erase history across the United States.

Mr. Steve Cobb apologized for taking the oath during Council's April 2, 2019 meeting regarding SUP 02-2019. He explained he arrived late to the meeting and was unaware he should

have taken an oath to speak. He pointed out he wrote an article that he considered publishing in the *Salisbury Post* relating to the Grievous Gallery.

Councilmember Miller commented that Mr. Cobb would be given the opportunity to be sworn in to speak during the SUP's public hearing. He asked Mr. Cobb if he prefers to hold his information until that time because Council cannot consider comments regarding the Grievous Gallery that are made during public comment period.

Mayor Heggins commented if Mr. Cobb has material evidence then he would be allowed to speak during the SUP's public hearing. Councilmember Miller clarified if Mr. Cobb is expressing his opinion public comment period would be the appropriate time to speak and if he has factual information to present to Council he should wait until the SUP's public hearing.

Mr. Cobb stated he would like to express his opinion during public comment, and he added he does not believe he has factual evidence to provide to Council. He then read an article he wrote relating to the SUP-02-2019 and its definition of a school.

Ms. Liliana Spears commended Council for having a public comment period. She stated she attended an afterschool program called "A Bridge 4 Kids" and indicated the program needs are not extensive. She added she does not believe it is City Council's job is to find a solution for all community matters, and she encouraged members of the community to engage and be a part of a solution for the community.

Mr. Mike Martelli noted he is opposed to keeping the Confederate monument because it is a painful reminder of history.

Ms. Jackie Miller expressed her concerns regarding her experience trying to have water services transferred into her name from her late mother's name. She asked Council for an update on revisiting the policy.

City Manager Lane Bailey commented City Attorney Graham Corriher addressed this issue at a previous Council meeting, and he indicated individual accounts cannot be discussed. He noted the concern relates to deposits and account issues. He added if proof of ownership is provided deposit fees are waived. He stated Mr. Corriher and staff are planning to attend training at the University of North Carolina at Chapel Hill and are working to update the policy.

Ms. MT Sidoli indicated the Confederate monument should be relocated, and she referenced the writing on the statue's plaque.

There being no one else to address Council, Mayor Heggins closed the public comment session.

**LAND DEVELOPMENT ORDINANCE TEXT AMENDMENT TA-02-2019 –
INTERNET/ELECTRONIC GAMING ESTABLISHMENTS**

Development Services Coordinator Teresa Barringer addressed Council regarding Land Development Ordinance (LDO) Text Amendment 02-2019 which relates to electronic and internet gaming establishments. She pointed out there has been an increase in complaints regarding gaming establishments being located in non-compatible zoning districts. She reviewed a report provided by the Salisbury Police Department regarding incidents that occurred at various gaming establishments in the City. She commented each location is currently registered as a business and allowed to conduct indoor amusement activities according to the current ordinance.

Ms. Barringer pointed out in the LDO Chapter 2.7 Use Matrix internet and gaming activities are included in indoor amusement allowed in the Corridor Mixed Use (CMX), Downtown Mixed Use (DMX), Highway Business (HB), Light Industrial (LI), High Industrial (HI), and Hospital Services (HS) zoning districts. She commented the proposed text amendment would add a distinct use identified as internet and electronic gaming to only be allowed in HB zoning districts with additional standards to be met. She noted under the current ordinance there are no additional standards for this type of internet and gaming activity, and she added additional standards would help create a better level of accountability and security.

Ms. Barringer reviewed the four additional standards required for businesses operating internet and electronic gaming establishments:

1. Internet electronic gaming shall not be located within 500 feet in any direction from any religious institution, public or private child care center or facility, public or private school or municipal government facilities, including but not limited to municipal public parks, during hours of operation, internet/electronic gaming operations shall be open for direct, unobstructed access by police, fire, and emergency response personnel.
2. All entrance doors shall remain unlocked while the premises are being occupied by patrons.
3. All internet/electronic gaming terminals/computers/tables/machines/gaming stations shall be open and visible from the exterior front of the establishment, no person or entity engaged in internet/electronic gaming operations shall allow, permit, or condone any person under the age of eighteen (18) to be upon the premises while patrons are engaged in the gaming operations.
4. All rules of the internet/electronic gaming shall be displayed in a visible prominent place within the establishment.

Ms. Barringer stated due to the difference between “indoor amusement” and “internet and electronic gaming” an addition to Chapter 18 is proposed that states “coin or token operated with no monetary or winnings of value” to specifically state there are to be no monetary winning or winnings of value.

Ms. Barringer pointed out where HB districts are located in the City. She noted the proposed regulation would affect businesses located on Statesville and Jake Alexander Boulevard, Mooresville Road, South Main and South Arlington Streets, Bendix Drive, and Faith Road.

Councilmember Miller asked what action is being taken regarding businesses with repeated illegal activity or nuisances reported. City Attorney Graham Corriher noted Chapter 19 in the General Statutes addresses criminal nuisance and what action the City or County can take in conjunction with Alcohol Law Enforcement (ALE) when repeated criminal activity is reported at a property. He added it is a long process that involves filing a lawsuit and getting it in conjunction against the property. Councilmember Miller asked if a business license can be revoked as an interim step instead of taking the property. Ms. Barringer agreed, and she noted only business registration is required due to the repeal in 2015 by the State of North Carolina for business license and privilege license taxation.

Councilmember Miller asked if there may be an issue communicating to business owners that nuisances are becoming a concern. Mr. Corriher clarified there has to be repeated acts over a significant period of time in order to receive ALE assistance.

Councilmember Miller asked if ALE has jurisdiction over businesses that do not serve alcohol. Mr. Corriher noted it does, and he added ALE has jurisdiction over more than just alcohol.

Mayor Heggins asked if any establishments have been shut down by the City due to nuisance issues. Mr. Corriher stated they have not, and he added the ordinance has been used for noncompliance. He noted it is a tool to use for any establishment identified as the center of criminal activity.

Councilmember Alexander asked how the proposed ordinance will affect existing businesses. Ms. Barringer commented the existing businesses are allowed to remain and would be considered legal non-conforming. She added if there is a change of use the business would not be allowed to remain the same. She explained if one business leaves and a different business comes in, the prior use would not be allowed. She noted if a business closes for less than 180 days a new business could propose to open in that specific time period as the same use. She stated if the tenant changes, and the use changes, the prior use would not be allowed.

Councilmember Sheffield asked if gaming activities would be allowed in the establishments outside the highway business zone if were to close for less than 180 days. Ms. Barringer agreed. Councilmember Sheffield then asked what the time frame for the incidents that occurred at the establishments and if it is a complete list of the total number of incidents. Ms. Barringer noted the information was provided by the Salisbury Police Department and to her knowledge it is a complete list. Police Chief Jerry Stokes commented businesses received permits in 2017 and the data is from January 2017 through April 2019. He noted those establishments were operating prior to April 2017, and he indicated there was a time period in which gaming stopped due to enforcement of the law.

Mayor Pro Tem Post asked if the added section of Chapter 3 of the LDO is a new definition. Ms. Barringer agreed. She noted the proposed ordinance was modeled after the City of Concord's current zoning ordinance relating to business land use and obtaining information from Article 37 of the General Statutes.

Councilmember Sheffield asked about enforcement of the required visibility of gaming stations from the front exterior. Ms. Barringer stated the City cannot apply new ordinances to existing locations, however, it could investigate violations of the current standards of 40% transparency regarding street facade windows. Ms. Barringer added those requirements are for any business type.

(b) Mayor Heggins convened a public hearing, after due notice thereof, to receive comments regarding TA-02-2019.

Mr. Michael Young requested clarification regarding the threshold for businesses and the incidents that take place. Mayor Heggins asked if a threshold is included in the ordinance. Ms. Barringer indicated there is not, and she pointed out the threshold would be at the discretion of the Police Department. Councilmember Alexander asked how many incidents occurred at the listed establishments, and she then asked for specific thresholds to be included in the ordinance. Mr. Corriher noted by state law whenever there is a nuisance no additional authority is needed under the ordinance to be enforced. He added he will look up the exact standard. Mayor Heggins asked about an option to set a threshold as a jurisdiction. Mr. Corriher explained the Police Department can do that without Council's approval.

Police Chief Stokes commented it depends on the situation and if it is reasonable for the Police Department to take significant action to potentially take ownership of a property or to rescind a property's use. He noted ALE is available to assist if requested. He added there have been approximately five or six incidents within a few years which is probably not excessive enough for reasonable action to be taken by the government. Mayor Heggins noted it may depend on the severity of the incident that occurs at the establishment. Chief Stokes agreed, and he added the severity is considered.

Mayor Pro Tem Post referenced North Carolina General Statutes 19-2.1 regarding actions for abatements and conjunctions, and he asked if there were any cases to occur in the City. Mr. Corriher noted a previous case from years past that did not go through because the nuisance was not frequent enough. He noted when a property is involved in criminal activity the Police Department and City work in conjunction with ALE and does not have to seek Council's approval if it gets to that level. He pointed out the ordinance is designed to restrict land use. Mayor Heggins referenced Mr. Young's question and asked if a threshold is listed in the ordinance. Mr. Corriher noted a threshold does not have to exist as it exists in state law.

There being no one else to address Council, Mayor Heggins closed the public hearing.

Councilmember Miller indicated the proposal is a good policy, and he appreciated it being brought to Council. He noted he is biased against this type of business because he does not think it has a productive use in the community and proposing a way to limit its spread is a good thing. He asked if a more proactive step could be taken to restrict business owners who allow illicit activities.

Mayor Pro Tem Post agreed, and he added anyone in the City can initiate an action to stop a nuisance from occurring. He noted the process of approving ordinances may grandfather in an

establishment, but he asked if establishments will have a specific amount of time to become compliant with the new ordinance.

City Manager Lane Bailey commented the City used to be able to require non-conforming uses to become compliant within a specified number of years. He added the General Assembly eliminated local government's ability to bring businesses into compliance with sign ordinances, and he is not certain if the General Assembly has eliminated the ability regarding non-conforming uses. Mr. Corriher noted he would look into the possible options.

Mayor Pro Tem Post noted it would be useful to know if the City is allowed to give businesses a specific number of years to become compliant.

Councilmember Sheffield commented HB seems to be an appropriate place for the internet and electronic gaming establishments since it is a business district.

Mayor Pro Tem Post asked if internet or electronic gaming business can only be created in HB zoning or if the ordinance allows internet and electronic gaming in establishments that are already in the HB zone. Ms. Barringer commented HB is the only zoning district businesses can request to have internet and electronic gaming activities.

Mayor Pro Tem Post asked if a gaming business could be located beside a Catholic Church. Ms. Barringer commented it could not, and she explained there is a provision in the ordinance restricting an establishment being located 500 feet in any direction from any religious institution.

Mayor Pro Tem Post asked if a gaming business could be located in a residential area zoned for HB. Ms. Barringer agreed, and she added single-family residence is a legal non-conforming use in HB so it would not be pertinent to also restrict it within its allowed district.

Councilmember Alexander asked if any coordination takes place between zoning and complying with North Carolina Building Codes. Ms. Barringer commented the Fire Marshall's office requires fire inspections prior to approval of a business registration, and she added the use of the establishment is verified and checked during the inspection to ensure it is compliant with building and fire codes. She pointed out the Fire Marshal's Office would work directly with Rowan County building inspections and will notify the City of any concerns and will not sign off on the registration if there are potential building or fire code compliance issues. She pointed out a beauty salon recently wanted to add gaming operations in the rear of its facility and had to submit a layout of the business floorplan that required the Fire Marshal's office approval. Councilmember Alexander thanked Ms. Barringer for her presentation.

Councilmember Miller commented internet gaming is an accessory type use, and he asked why a beauty salon is allowed to have games in the back room. Ms. Barringer noted under the current ordinance indoor amusement is permitted as a use in the DMX zone. Councilmember Miller asked if mixed-use would not be allowed going forward. Ms. Barringer agreed.

Mayor Pro Tem Post pointed out the reason for internet gaming establishments is for people to win money. Ms. Barringer commented according to General Statutes it is legal due to the

difference between a game of chance and a game of skill. She added these establishments are claiming the games are a game of skill which is permitted by law.

Councilmember Sheffield stated the City Council hereby finds and determines that adoption of an ordinance to amend the Land Development Ordinance of the City of Salisbury as underlined or stricken herein is reasonable, in the public interest, and consistent with the Vision 2020 Comprehensive Plan relative to continually refining the policies and provisions of the development process and finding creative solutions for unique properties while protecting neighborhood interests. Thereupon, Councilmember Sheffield made a **motion** to adopt an Ordinance amending Chapters 2, 3, and 18 of the Salisbury Land Development Ordinance, of the City of Salisbury, North Carolina related to internet/electronic gaming. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

ORDINANCE AMENDING CHAPTERS 2, 3, AND 18 OF THE SALISBURY LAND DEVELOPMENT ORDINANCE, OF THE CITY OF SALISBURY, NORTH CAROLINA, RELATED TO INTERNET/ELECTRONIC GAMING. (PETITION NO. LDOTA-02-2019)

(The above Ordinance is recorded in full in Ordinance Book No. 28 at Page No. 53-130, and is known as Ordinance 2019-19.)

LANDMARK DESIGNATION – SALISBURY SOUTHERN RAILWAY PASSENGER DEPOT – 215 DEPOT STREET

Development Services Specialist Catherine Clifton presented Council with a request to designate the Salisbury Southern Railroad Passenger Depot located at 215 Depot Street as a local historic landmark. She noted the Local Historic Landmarks Program is authorized by the North Carolina General Statutes in addition to Local Historic District Program.

Ms. Clifton explained when a property becomes a landmark the property owner is eligible to apply for an annual 50% property tax deferral, and she added the property becomes protected under Salisbury's Historic District and Design Guidelines Program. She noted the Landmark Program allows for designation of interior spaces to be preserved. She added the Historic Preservation Commission (HPC) has determined the proposed landmark meets all criteria because its exteriors and interiors are architecturally distinctive and unique examples of the Spanish mission style in Salisbury.

Ms. Clifton pointed out the Depot building and its southern gardens are proposed to be included in the landmark designation. She noted the parking area to the north is not included in the landmark designation but is a part of the Downtown Historic District.

Ms. Clifton stated the landmark designation process began in October 2018 with a pre-application approved by the HPC. She added in February 2019 a Survey and Research (S/R) Report was completed with the North Carolina State Historic Preservation Office (SHPO) for review. She noted SHPO returned a positive letter of comment in March 2019 which stated the Depot was constructed by Frank P. Milburn and was significant for its historic architecture and its

importance in local transportation history. She indicated the Depot also played an important role in Salisbury's transportation history, growth and development.

Ms. Clifton commented the HPC reviewed the final application and found the Depot should be recommended for local historic landmark designation because it meets the significance and integrity criteria.

Mayor Heggins asked if Council had any questions before the public hearing began.

Councilmember Sheffield asked if the exterior of the Depot is protected by the Historic District and if the interior will be preserved by the landmark designation. Ms. Clifton agreed, and she noted the landmark designation allows for preservation of interior features specifically identified in the landmark designation request. Councilmember Sheffield asked if a list of interior features was included in the request. Ms. Clifton agreed.

Councilmember Sheffield asked about the upkeep of the Depot and if repairs would be limited if it is designated as a landmark. Ms. Clifton noted the HPC considers repairs as routine maintenance which are permitted without a certificate of appropriateness or permit.

Councilmember Miller asked how the landmark designation could affect potential development of a second platform at the Depot. Ms. Clifton noted the historic preservation status does not regulate use but is for proposed changes or additions. She added to her knowledge the landmark status would not affect the addition of a second platform.

Councilmember Miller asked if the design of a second platform would have to be sensitive to the existing Depot structure if approved as a landmark. Ms. Clifton agreed, and she added additions in the Historic District would have to be sensitive to the Historic District structures and would be reviewed by SHPO.

Mayor Pro Tem Post asked about the landmark designation area and he noted the future platform would be outside the designated landmark areas. Councilmember Miller commented with the previous discussion of a handicap access elevator being placed at the second platform it would not be outside of the designated area. He asked how the landmark designation will affect future plans for a second platform at the train station. Ms. Clifton commented she has not reviewed the proposal for the second platform and is not certain where the proposed elevator structure will be located. She commented if federal money is received the request will go to SHPO and it has to be sensitive to the Depot structure. She pointed out the HPC will get the opportunity to comment and present the City with a recommendation on the request, and she added there would an opportunity to comment to SHPO for a final decision.

Mayor Heggins convened a public hearing, after due notice thereof, to receive comments regarding the designation of the "Salisbury Southern Railway Passenger Depot" located at 215 Depot Street, as a local historic landmark.

Ms. Karen Lilly-Bowyer commented she supports the designation of the Salisbury Train Station as a City landmark. She noted the station has been recognized nationally for its architecture.

She added the Depot is incredibly important to the City because of its cultural significance and in some ways the catalyst for revitalization of our railroad and fair housing district. She asked Council to consider the proposal to designate the Depot as a historic landmark.

Historic Salisbury Foundation (HSF) President Susan Sides commented there are a few people in this community that does not recognize the Depot as outstanding. She asked Council to consider the designation of the Depot as a historic landmark.

Ms. Ann Lyles pointed out several people in the audience were in attendance to support the designation of the Depot as a historic landmark.

There being no one else to address Council, Mayor Heggins closed the public hearing.

Councilmember Miller commented he is in favor of the landmark designation. He added his consideration was in regards to how the landmark designation would impact the proposed future development at the Depot and asked for the development be sensitive to the Depot. He pointed out if being sensitive to the structure slows down the process, or creates another step, he thinks it is appropriate action to take in designating the Depot as a landmark.

Councilmember Sheffield stated she thinks historic landmarks can be maintained in the City and there should be the ability to move forward with what the future may bring. She thanked everyone who is working to get the Depot designated as a landmark.

Mayor Pro Tem Post noted the Depot is a unique landmark and is recognized nationally in the American History Museum in Washington, D.C.

Thereupon, Councilmember Alexander made a **motion** to adopt an Ordinance designating the "Salisbury Southern Railway Passenger Depot," located at 215 Depot Street in Salisbury, North Carolina, as a historic landmark. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

ORDINANCE DESIGNATING THE "SALISBURY SOUTHERN RAILWAY PASSENGER DEPOT," LOCATED AT 215 DEPOT STREET IN SALISBURY, NORTH CAROLINA, AS A HISTORIC LANDMARK

(The above Ordinance is recorded in full in Ordinance Book No. 28 at Page No. 131-134, and is known as Ordinance 2019-20.)

CONT'D – SPECIAL USE PERMIT SUP-02-2019 – 111 WEST BANK STREET

Mayor Heggins indicated anyone who wished to speak for or against this item must be sworn in, and she asked those who would like to speak to come forward. City Clerk Diane Gilmore administered the oath to the following:

Ms. Teresa Barringer

Ms. Catherine Clifton

Ex-Parte Disclosure

City Attorney Graham Corriher asked the following four questions to ensure that City Council is impartial in this matter.

Mr. Corriher asked if any member of Council has a fixed opinion on this matter that is not susceptible to change. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield each stated they did not.

Mr. Corriher asked if any member of Council had any ex-parte communication about the subject matter of this request with the applicant.

Councilmember Miller indicated other than what he disclosed at the previous meeting he spoke with a *Salisbury Post* reporter and was careful not to respond to zoning type questions.

Councilmember Sheffield noted she was not present for the previous meeting but has read the minutes from the last meeting and watched the recording. She stated she received emails and spoke to several people who are in support and opposition of SUP-02-2019. She clarified that the information shared was opinions and would not be considered evidence. She stated she did not receive closed session minutes and is not aware of what took place during that meeting.

Councilmember Alexander stated she received several emails from people who expressed their opinions regarding the SUP.

Mr. Corriher asked if Councilmembers are able to make a decision based on the evidence presented at its previous hearing and the evidence that would be presented today. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield each stated they would.

Mr. Corriher asked if any member of Council has a close familial, business or other associational relationship with the applicant. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield each stated they did not.

Mr. Corriher asked if any member of Council has a financial interest in the outcome of this matter. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield each stated they did not.

Development Services Coordinator Catherine Clifton provided additional information based on the comments heard at the previous public hearing on April 2, 2019, and some discussion by Council based on approved SUPs for similar type, uses or businesses within one year. She reviewed a property map, and she indicated the LDO requires that an additional use standard for any bar, tavern, or nightclub cannot be within 500 feet of a school. She pointed out three businesses located within a 500-foot radius of First United Methodist Church that received an SUP to permit the sale and on-site consumption of alcohol. She added there are five restaurants within

the radius that serve beer and wine. She indicated there are two parcels that staff believes to be serving beer and wine that do not maintain a SUP and are not restaurants.

Councilmember Alexander asked how the two parcels are serving beer and wine without obtaining an SUP. Ms. Clifton commented one parcel operates as a theatre and to staff's knowledge it has served beer and wine since before the LDO was adopted in 2008. She added it would be considered a legal nonconforming use. She noted at the second parcel it was determined by a former employee that alcohol is an accessory use to the business' retail space and did not have an SUP.

Councilmember Alexander asked if the parcels are located on Main Street. Ms. Clifton agreed.

Councilmember Miller stated having alcohol as an accessory use for Grievous Gallery would make sense. He noted the sale of alcohol at the theatre would be its accessory use to its primary purpose because it is not open every night of the year and the accessory use could work for Grievous Gallery within its definition.

Councilmember Sheffield pointed out La Cava is not indicated on the map but it is located on Church Street. Ms. Clifton commented that particular SUP closed and the parcels indicated on the map are the parcels staff readily found that are in operation.

Councilmember Miller indicated there is a restaurant in close proximity working out of a rented home that is not listed on the map. Councilmember Alexander stated she thinks that property is currently vacant. Councilmember Miller commented there could be a tenant in the future. Councilmember Alexander asked if a permit goes with the land. Ms. Clifton stated that if the parcel has an SUP then an SUP would not be required. Councilmember Alexander asked if the facility would need an SUP if it opened with the primary use of a bar or tavern. Ms. Clifton indicated the business owner would then need to request an SUP.

Mr. Corriher asked if any properties have been denied an SUP within the 500-foot radius of First United Methodist Church. Ms. Clifton commented she is not aware of any that have been denied.

Mayor Heggins stated if any applicants wish to provide testimony they will need to be sworn in at this time. City Clerk Diane Gilmore administered the oath to the following:

Ms. Elysia Demers
Mr. Gregory Rapp

Ms. Elysia Demers indicated she would like to present Council with additional testimony from her expert witness, Mr. Gregory Rapp, regarding property values. She asked for clarification of conditions before Council votes on the SUP.

Mr. Gregory Rapp stated he has been a realtor in the City of Salisbury and Rowan County since 2003 and would like to offer expert testimony regarding property values in the West Square

and adjacent historic districts relating to Grievous Gallery. He indicated he has been a licensed real estate broker in North Carolina for 16 years, and he resides in the Brooklyn South Square historical district. He pointed out he is currently the agent in the area who sells the most historic real estate properties and has maintained that record for several years. He stated between January 1, 2015 and December 31, 2018 he was ranked sixth based on dollar volume for the 28144 zip by the Charlotte Multiple Listing Service (MLS), ranked third based on unit count, and sold 69 homes in zip code 28144. He indicated he was recognized by the Historic Salisbury Foundation with its Craftsman and Preservation Professional Award for marketing historic properties. He indicated he practices residential and commercial brokerage and property management. He stated his commercial sales in the downtown areas include the historic firehouse property located on South Lee Street, residential units in the Firehouse Urban Lofts, Empire Annex located at 228 South Main Street, the Bernhardt Hardware Building, and property located at 122 East Innes Street. He stated he was the real estate manager for the commercial portion of the Empire Hotel that represented Downtown Salisbury, Inc. for 10 years. He added he manages commercial properties located at 110 and 112 East Council Street. He stated he has sold dozens of historic properties in the downtown Historic District including properties in the West Square, Brooklynn-South Square, North Main Street District, Ellis Street Graded School, Park Avenue, and Fulton Heights.

Mr. Rapp noted Council requested testimony from a real estate expert who does not know the applicant, and he added this request would be nearly impossible due to the small size of Salisbury. He commented as a local expert he will speak truthfully and accurately relating to property values in Salisbury, rather than seeking an agent not local to the area. He stated people have expressed their opposition and opinions without evidence that allowing the sale of wine and beer at Grievous Gallery could lower their property values. He stated his research includes data from homes that have sold more than once to highlight property values that have steadily increased over the same years that there has been an increase in alcohol consumption at venues in Salisbury.

Mr. Rapp indicated his data includes seven homes located in the West Square, four homes in the Fulton Heights neighborhood, and five homes in the Brooklyn-South Square neighborhoods, and he added these neighborhoods have been impacted by SUP's in the past. He indicated the West Square and the Brooklyn-South Square neighborhoods are directly related by proximity to the Grievous Gallery business. He noted in 2001 there were approximately four establishments serving alcoholic drinks: Las Palmas, La Cava, Benchwarmers, and the State Smoke Shop. He pointed out the downtown area currently has 20 venues that serve alcohol not including event venues like the Historic Salisbury Foundation's Trolley Barn, Salisbury Train Depot, and the Heritage Room where alcohol may also be served.

Mr. Rapp reviewed West End Square property values increases:

- 722 South Fulton Street that sold in February 2007 for \$255,000
 - The property sold again in April 2016 for \$269,000
- 225 South Fulton Street sold in June 2002 for \$231,000
 - The property sold again October 2018 in the amount of \$345,000.
- 315 South Ellis sold in December 2004 for \$190,000

- The property sold again in June 2012 for \$182,000
- The property sold for a third time April 2018 for \$239,000
- 201 South Ellis sold March 2017 for \$285,500
 - The property sold in January 2018 for \$344,500
- 429 South Church Street sold in May 2018 in the amount of \$86,700
 - The property sold again for \$130,000 in December 2017
- 403 South Church property sold for \$41,650 in January 2013
 - The property sold again April 2014 in the amount of \$110,000
- 428 West Horah sold in April 2007 for \$165,000
 - The property sold again May 2016 for the amount of \$200,000

Mr. Rapp pointed out West Square property values increased by 33.5%. He stated another important consideration is the Fulton Heights area that once included Mambo Grill, MG Lounge which was a full scaled bar and nightclub, and Mean Mug Coffee which sold alcohol. He noted Fulton Heights property values have increased by 20% since 2009. He stated Brooklyn-South Square neighborhood is close to downtown establishments that serve alcohol and is adjacent to the property requesting the SUP. He added the areas' property values have increased 29% since 2004. He stated all the data he has provided is public record and can be sourced from MLS data or Rowan County GIS. He indicated property values continually show an increase and are consistent with the number of businesses in the Municipal Service District (MSD) that serve alcohol. He noted because this hearing is considered a quasi-judicial hearing he presents the following facts that are neither his opinion nor biased. He stated it is a fact that the Planning Board has recommended the SUP, the SUP permit can be revoked at any time, the property values have risen in the West Square, Fulton Heights, and Brooklyn-South Square neighborhoods and coincide with the number of establishments that sells alcohol in the MSD. He pointed out many facilities in the downtown area have residential units above, adjacent, or within one block of an establishment that serve alcohol such as Bernhardt Hardware, Washington Building apartments, Michael Young's apartment, and Fire House Urban Loft condos. He noted the Yadkin House senior living facility is close in proximately to New Serum Brewery.

Mr. Rapp commented Downtown Salisbury, Inc. (DSI) encourages mixed and adaptive reuse of downtown buildings. He stated the Grievous Gallery request is consistent with the definition of Downtown Mixed-Use (DMX) zoning conditions and could bring business to the previously abandoned buildings. He commented DSI hosts alcohol-based events annually within the MSD, and he added those events have not had a negative impact on residential properties in the area. He noted the City issued grant funding and incentives to New Serum Brewery, Morgan Ridge Railwalk Brewery, and Bernhardt Hardware that demonstrate its support of businesses with an alcohol sale component. He indicated as an expert in sales and marketing of residential and commercial properties located within historic district neighborhoods and DMX areas that he has provided data to Council that consistently indicates with the number of venues that offer the sale and consumption of alcohol property values have increased in the MSD area. He noted as he continues to attract buyers to Salisbury from out-of-state he is consistently asked about the livability, walkability and area nightlife, and he added these amenities are what attracts positive demographics for Salisbury.

Mayor Heggins asked if there were any individuals that wish to come forward with material evidence and provide a testimony.

City Clerk Diane Gilmore administered the oath to the following:

Ms. Sue McHugh

Ms. Sue McHugh referenced discussions relating to the definition of school. She stated a school should include a recessed driveway for the safe and secure transport for disembarking of students. She added schools are required to have standardized testing or an annual assessment of student achievements in reading, mathematics, and science under the program called "No Child Left Behind" a state program that was implemented in 2007. She commented homeschooling is required to administer a nationally standardized test or a test that is an equivalent measure on an annual basis. She noted the North Carolina Department of Health and Human Services (NCDHHS) division of child development and early education indicated that Pre-K is designed to enhance school readiness for four-year-olds with five development approaches to play-and-learning, emotional and social development, health and physical education, language, and communication development, and cognitive development. She indicated the early childhood division suggests that a daycare center is considered a place where two or more children who are not related spend four or more hours a day. She stated a childcare center consists of three or more children and requires licenses of supervision, condition of equipment, discipline practices, child and staff ratios, sanitation, health and safety and staff education for professional, development, and training. She commented First United Methodist Church does not provide safe or secure disembarking for its students, and does not provide standardized testing. She noted the division of childcare development services suggests that religious sponsored programs and childcare centers are exempt from licensing requirements. She suggested there is not an issue with the definition of a school but there is an issue with the Land Development Ordinance's (LDO) definition of a bar, tavern, and nightclub. She stated Grievous Gallery desires to serve wine and beer only as an accessory use to its event center.

Mr. Corriher suggested Council consider only factual evidence presented at the previous and current public hearing. He added there were a lot of opinions and analysis of the LDO provided, and he does not believe those are material evidence that Council can consider. He indicated it is Council's responsibility to interpret the intentions of its LDO, and he noted he would help Council with any questions it may have. He added it is not a prerogative of a witness to interpret the LDO. He stated personal opinions should not be considered. Mr. Corriher commented in relation to the definition of school, Council has read the LDO's requirements of 500 feet from any school, and he stated it has been a previous practice of Council to grant SUPs within a 500-foot perimeter. He suggested Council consider that under North Carolina case law any ambiguity in the LDO has to be construed in favor of the free use of land, and Council cannot restrict the use when ambiguity is listed in the LDO.

Mayor Pro Tem Post asked Mr. Rapp if he stated that an SUP can be revoked at any time. Mr. Rapp stated he did. Mr. Corriher stated Council can rescind SUPs by following a process to establish conditions, and he pointed out SUP violations are channeled through the Code Enforcement Department, Planning Board, and then presented to Council.

Councilmember Sheffield noted the LDO provides a list of ways an SUP can be revoked or terminated. She asked if Council would need to determine the three standards of the use which are it meets all required principles and specifications of the Ordinance and any adopted land use plans and that the proposal would be in harmony with and the general purpose and intent and preserves its spirit; and the proposal as submitted and approved will be visually and functionally compatible with the surrounding area; and the public health, safety, and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed in order to approve the SUP. Mr. Corriher agreed.

Councilmember Sheffield asked if the three standards provided are what the Planning Board had to meet for it to make its recommendation to Council. Mr. Corriher agreed, and he noted the proposed use is permitted within the district with the issuance of an SUP. He clarified in order to issue an SUP the three standards are the factors Council should consider, and he added if the request meets all of the standards based on the evidence presented then the applicant would be entitled to a permit and cannot be denied. He stated the only way the SUP could be denied is if the applicant did not meet the burden of proof for one of the factors or if there is contradictory evidence regarding one of the factors, and if Council determines the contradictory evidence is stronger than the applicant's evidence.

Mayor Pro Tem Post commented there is an issue with the proposed establishment's location being 500 feet from any lot containing a school, public or private. He asked if an ambiguity would be determined to be in favor of the applicant because school is not defined in the LDO. He added he believes the LDO addresses two types of schools. Mr. Corriher stated an ambiguity in the LDO would be in favor of the free use of the land. He stated Council cannot impose a restriction where there is an ambiguity, and he clarified when there is ambiguity it must be resolved in favor of the applicant's free use of the land. He added finding that the proposal is within that definition would restrict its use because that is the only additional standard for this type of use.

Councilmember Alexander asked if the applicant had a professional to evaluate the space based on its future use as an event space because the facility would be used differently than it was initially designed for. She noted whenever space becomes an event space under the North Carolina Building Code it becomes classified as an assembly with requirements for health, safety, and welfare. Ms. Demers commented a Fire Marshall evaluated the property as an assembly space, and she added alterations were made to the building relating to the fire suppression system, relocated sprinkler heads, and added safety and emergency exit lighting, and fire extinguishers in order to comply with assembly space requirements. She noted the event space is considered the facility's secondary use. Ms. Barringer stated she had spoken with the Fire Marshall and verified that information to be correct. Ms. Demers indicated there is a maximum capacity of 511 people on the premises throughout the 14,000 square feet building.

Councilmember Sheffield asked the applicant about the plans regarding event space safety. Ms. Demers commented the business will keep capacity lower than 250 people for any event, and she added for special events with over 100 people security will be onsite. Councilmember

Sheffield asked for clarification regarding onsite security. Ms. Demers commented onsite security would be hired licensed security personnel.

Mayor Pro Tem Post commented the First United Methodist Church child care program closes at 6:00 p.m., and he noted there are restrictions placed by the Planning Board that Grievous Gallery would open at 4:00 p.m. He asked the applicant if she has any objections to changing the opening hours to 6:00 p.m. Monday through Thursday. Ms. Demers stated a representative from the church spoke at Planning Board meetings about child pickup times and stated they are at 2:00 p.m. and sometimes the church has an after-school program. She noted a modification was made to business operation hours from 2:00 p.m. until 11:00 p.m. to 4:00 p.m. until 11:00 p.m. to allow time when the child care center closes and the Grievous Gallery opens. Mayor Pro Tem Post commented there is a conflict because the Planning Board recommended a 6:00 p.m. opening time, and he asked how the ambiguity rule would work with the conflict. Mr. Corriher asked if he was referring to when the school closes. Mayor Pro Tem Post agreed. Mr. Corriher commented Council would need to rely on the testimony that was provided to Council. Ms. Demers asked if the conflict would be noted in the Planning Board's minutes. Mr. Corriher agreed. Mayor Pro Tem Post stated the issue was discussed at Council's previous meeting with Mr. Conforti and Councilmember Alexander.

Councilmember Sheffield commented Ms. Demers is working on the Grievous Gallery space, and she asked if Ms. Demers foresees business operation hours differing from alcohol serving hours. Ms. Demers stated the business' current operating hours are Tuesday through Saturday from 6:00 p.m. to 10:00 p.m., and she added 10:00 p.m. is the last appointment and the business is closed by 11:00 p.m. because of noise ordinance purposes. She commented she hopes in the future as the business grows and opening hours would be 2:00 p.m. until 10:00 p.m. or 11:00 p.m. with the possibility of opening the business on a Sunday for special events. She noted Grievous Gallery opens by appointment for special sessions.

Councilmember Sheffield commented based on the recommendations made by the Planning Board there are requirements that Council must meet. She stated there seem to be separate issues regarding the Ordinance definitions, and she agreed that the LDO needs to be reviewed and the issues separated from this applicant's request.

Mayor Pro Tem Post pointed out that Council discussed a need to review the LDO, and he stated he believes the request grants a permanent use because the SUP would remain with the land. He commented he is confident that Grievous Gallery owners would follow the SUP, but future use is a concern. Councilmember Sheffield noted there are provisions in place to address future issues.

Councilmember Miller asked if the majority of Council would be agreeable with the Planning Board's proposed conditions and to request the Planning Board review the legislative processes and come up with alcohol sales as an accessory use. He then asked if there is a mechanism that can be put into place to allow Council to make changes to the current proposal if it is adopted. Mr. Corriher stated Council cannot add anything to the proposed SUP that requires the owner to do anything other than obey the conditions of the SUP. Councilmember Miller asked Mr. Corriher if it would be reasonable to ask the Planning Board to present Council an Ordinance that provides alcohol sales as an accessory use within 60 to 90 days. Mr. Corriher deferred the

question to staff. Ms. Barringer commented the request would be reasonable within no more than 90 days and possibly in 60 days. Councilmember Miller commented he believes the right course would be to ask the Planning Board to review the request quickly to get the right alcohol sales as an accessory use Ordinance for the LDO. He commented he believes alcohol sales as Grievous Gallery's secondary use is a great fit for the business. He commended Grievous Gallery for its food truck events and stated he believes the right planning for its SUP request would be to allow the Planning Board to review the LDO for revisions. He asked the applicant if his proposal of waiting 60 to 90 days for time to review the LDO would be something she would consider.

Mayor Heggins commented she believes Councilmember Miller is suggesting that the applicant wait until the Planning Board presents Council in revisions to the LDO. She noted the applicant has been asked to meet certain conditions with the current SUP, and she would like to work within those conditions. Mayor Heggins commented she agrees that there needs to be updates and changes made to the LDO, but she does not believe it to be fair to ask the applicants to delay their request. Councilmember Miller commented the applicant can agree or not but either way Council will vote. He added he was curious to see if the applicant would be agreeable with the delay as an outcome. Councilmember Sheffield commented she believes it is unfair to put an applicant on the spot when the applicant has followed the procedures to apply for an SUP. She noted Council is dealing with an Ordinance from January 1, 2008, and it is time that the Ordinance be rewritten. She added she does not think it is fair to put the applicant on hold again after several months. She pointed out Council has not asked other applicants who applied for an SUP to delay their request. Mayor Heggins agreed.

Mayor Heggins asked Council to make a consideration regarding the proposal in front of them today based on the standards provided. She stated she believes it is outside the perimeters of Council to make decisions based on what Council thinks it should be.

Councilmember Alexander commented in every case that Council has considered issuing an SUP, it has spoken to an applicant who is willing to abide by a condition that Council sets and the applicant has been given an opportunity to say yes or no to that condition. She stated the operation hours need clarification because she would not want Council to put a burden on the owner to say whether it could or could not open its business until 2:00 p.m. if they open for other purposes other than serving alcohol. She suggested including the hours that the business could serve alcohol in the conditions. Councilmember Miller pointed out that is listed in one of the conditions.

Mayor Heggins asked if the Planning Board made a recommendation to Council in support of issuing the Grievous Gallery an SUP. Mr. Corriher agreed, and he noted the applicant has the right to have the case decided using the existing Ordinance. He stated there has been a lot conversation tied to the definition of bar, tavern, and nightclub and the proximity of Grievous Gallery to a residential area to make sure the business would not negatively affect the residents in the area. He noted the proposed conditions are quite restrictive and there was a lot of discussion by the Planning Board surrounding the conditions. He pointed out the applicant has agreed to all the recommended conditions. He stated if a new Ordinance is presented to Council he is not certain that it could be drafted in such a way to be as restrictive as the conditions listed in the proposed SUP.

Mayor Pro Tem Post stated the Planning Board is an advisory board, and Council is not required to agree with its recommendations. He asked if it is a state or city law that the definition of an SUP remains with the land forever, and he noted the SUP could be considered as a perpetual easement. Mr. Corriher indicated an SUP is controlled by both and state law permits the City to require SUPs and then the City Ordinance states what is required. Mayor Pro Tem Post asked if there is a state law that suggests an SUP is required to be a permanent easement and Council can change its rules. Mr. Corriher commented it is a common law right. He clarified that the proposal's land use meets the City Ordinance and the use is permitted in the district as long as the standards are met and the land-use is perpetual. Mayor Pro Tem Post asked if the state requires an SUP cannot move with the user and must remain with the land. Mr. Corriher pointed out state law controls ordinance and common law. Mayor Pro Tem Post asked Mr. Corriher if he could look into whether or not local law can change requirements. Mr. Corriher stated he would look into it.

Councilmember Miller indicated he is not sure it is fair to place restrictions on the applicant or to review the LDO, and he noted there is a sense of urgency that could help find a solution.

Mayor Heggins commented she understands the urgency to review the LDO and that Council should continue to push its review. She noted she believes that the applicant has submitted themselves by going through the process, and she added she believes the applicant is ready to move forward with the SUP as it is currently.

Councilmember Miller stated a bar or tavern does not belong at the Grievous Gallery's location. He noted a restaurant was permitted to be within 50 feet of First United Methodist Church because the approval was based on business type use and not the applicant.

Councilmember Miller commented he believes the proposed conditions satisfy his concerns as it relates to the proposal being referred to as a bar or tavern. He added the Ordinance needs review but he would not hold up the applicants' process for the Ordinance to be rewritten.

Ms. Demers asked for clarification regarding some of the restrictions. She asked if Grievous Gallery would be required to provide paid security during open microphone nights held on Tuesdays from 8:00 p.m. until 10:00 p.m., and she noted it is typical for approximately 40 people to attend. She asked if live music must conclude by 9:00 p.m. on Sundays through Thursdays, and she pointed out those times would interrupt an event that Grievous Gallery hosts. She requested that all live performances be fixed to comply with the City's noise ordinance requirements.

Mayor Pro Tem Post asked the applicant if she would be willing to wait to serve alcohol until after 6:00 p.m. because of the children at the church. Ms. Demers commented she was told the children leave at 2:00 p.m. and accommodated the concern by opening the gallery at 4:00 p.m. She added she believes she has already made a substantial adjustment in operation times would affect possible events. Mayor Pro Tem Post commented he suggested a 6:00 p.m. time to start the sale of alcohol. Ms. Demers stated alcohol sales are part of Grievous Gallery's daily operations. She stated people may wait until 6:00 p.m. to book an appointment due to alcohol sales beginning at 6:00 p.m.

Councilmember Sheffield commented she believes this SUP's conditions are sufficient when compared to previously approved SUPs. She noted Grievous Gallery hosted the Rowan-Cabarrus Community College (RCCC) fine arts conference that began at 5:00 p.m., and she added she does not support negotiating a time that the business will be allowed to serve alcohol.

Mayor Heggins asked Ms. Demers if she is requesting to remove a condition related to live music which must conclude by 9:00 p.m. Sundays through Thursdays and by 10:00 p.m. on Fridays through Saturdays while leaving the condition relating to live music performance compliance with the City's noise ordinance requirements. Ms. Demers agreed, and she requested clarification regarding the condition related to security needs for open microphone nights.

Councilmember Sheffield asked if an attendance number could be limited for live music nights. Ms. Demers commented she would consider attendance restrictions. She asked if a one-day permit or special event would affect the SUP if alcohol is purchased by event organizers or if someone steps outside with an alcoholic drink in hand to smoke a cigarette. Mr. Corriher stated he does not believe the City would issue a permit that would violate the standing permit. Councilmember Miller asked if the SUP requires that all alcohol consumption be inside the facility. Ms. Demers asked if the SUP terms remain in effect for their event if someone obtained a one-day ABC permit to provide their own alcohol for an event. Mr. Corriher agreed as it relates to the sale of alcohol. He stated if they have an ABC permit that allows something different from what the City's permit allows, then the ABC permit would control the conditions of the event.

Councilmember Miller asked if there are requirements that patrons remain inside the facility with alcohol, and he asked if someone provides their own alcohol would that change what they are allowed to do on the property. Ms. Demers asked if the consumption of alcohol would be limited to indoors. She stated Grievous Gallery may decide to host a food truck event with alcohol sales in its parking lot.

Councilmember Sheffield asked how alcohol is permitted at the Cheerwine festival. City Manager Lane Bailey commented it is a special permit, and he noted restaurant owners work with Alcohol Law Enforcement (ALE) to extend dining operations to the sidewalk.

Mr. Corriher suggested an addition to the condition that does not permit alcohol sales outside of the facility without a permit obtained from ALE through an ABC permit or the City.

Councilmember Alexander asked if someone else supplies the alcohol if it is restricted to only beer and wine. Councilmember Miller commented beer and wine are restricted to Grievous Gallery's sales.

Mayor Pro Tem Post suggested changing the start time of alcohol sales from 4:00 p.m. to 6:00 p.m. to be the best way to ensure that the property's future use would not become a bar or tavern. Councilmember Sheffield commented she believes there are provisions in place that would protect the City from the next user without further penalizing the current applicant.

Mr. Corriher stated he has updated revisions for the finding of facts, and he requested a five minutes recess to distribute the new proposed finding of facts to Council.

RECESS

Thereupon, Mayor Heggins made a **motion** to take a five minute recess. Mayor Heggins and Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

The meeting reconvened at 8:51 p.m.

Mayor Pro Tem Post asked about the planned additional use for a bar noted in the first standard. Mr. Corriher suggested the revision to include “a proposed use is compatible with the current business.” Councilmember Miller stated he does not agree with bar or tavern use but does agree with the use of the conditions presented. Mr. Corriher commented the finding of additional conditions are required to ensure the use is functionally compatible with the surrounding areas. He noted evidence should be in connection with the standards, and he added he believes the connection should be related to the SUP’s proximity to a residentially rezoned area.

Thereupon, Mayor Pro Tem Post made a **motion** based on the evidence presented that Council finds the following facts related to the first standard required by the Salisbury LDO for issuing a Special Use Permit:

1. The use meets all required principles and specifications of the Ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit as evidenced by the following testimony:
 - A) The site is located within the Downtown Mixed Use zoning district.
 - B) The main use of the business is an art gallery and the planned additional use will allow alcohol subordinate to the art gallery use.
 - C) The planned additional use allowing for the consumption of alcohol is compatible with the current business and surrounding businesses.
 - D) The use will allow for alcohol consumption inside the establishment provided that an ABC permit is issued by the state and the alcohol consumption is consistent with that permit.
 - E) The proposed establishment is not located within 500 feet of any lot containing a school defined in Chapter 18 of the Land Development Ordinance.

Councilmember Miller seconded the motion. Mayor Heggins and Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

Thereupon, Councilmember Miller made a **motion** based on the evidence presented that Council finds the following facts related to the second standard required by the Salisbury LDO for issuing a Special Use Permit:

2. The proposal as submitted and approved will be visually and functionally compatible to the surrounding area as evidenced by the following testimony:

- A) The use will be located within an existing commercial building that will not be changed and that is visually and functionally compatible to the surrounding area.
- B) Alcoholic beverages sales and consumption will be during the business hours only, subject to the conditions set forth in this Special Use Permit.
- C) Alcohol will not be consumed outside of the building unless a separate sidewalk fining permit is obtained.
- D) The proposed use will be adjacent to a residential zoning district and shares a property line with residential apartment building.
- E) Additional conditions are required to ensure that the use is functionally compatible with the surrounding area.

Mayor Heggins and Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

Thereupon, Councilmember Miller made a **motion** based on the evidence presented that Council finds the following facts related to the third standard required by the Salisbury LDO for issuing a Special Use Permit:

3. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed as evidenced by the following testimony:

- A) Alcohol sales remain subject to state law, including permitting and licensing requirements.
- B) The nature of the business will be primarily as an art gallery with on-site consumption as a secondary or accessory business activity.
- C) The use is compatible with other downtown uses.
- D) The business hours of operation will be Tuesday through Saturday's 2:00 p.m. until 11:00 p.m., and Sundays from 2:00 p.m. to 9:00 p.m. for special or private events only.
- E) The proposed use will be adjacent to residential zoning district and shares a property line with residential apartment building.
- F) Additional conditions are required to assure that the use ensures the health, safety, and welfare of the surrounding areas.
- G) The proposed development will not sustainably injure the value of adjoining property associated uses if located where proposed according to the testimony received by Mr. Gregory Rapp, esquire.

Mayor Heggins and Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

Thereupon, Councilmember Miller made a **motion** for Council to issue Special Use Permit (SUP) 02-2019 to permit an art gallery with alcohol sales and on-site consumption of alcoholic beverages at 111 West Bank Street, Salisbury, North Carolina, based on the applicant having proved by substantial, competent, and material evidence that all standards of the Salisbury Land Development Ordinance (LDO) have been met, subject to the following conditions, which will ensure that the use is functionally compatible with the surrounding residential area and will assure that the health, safety, and welfare of the surrounds residential area:

1. On-Site alcohol sales and consumption may only occur between 4:00 p.m. and 10:00 p.m. Tuesday through Saturday, and between 4:00 p.m. and 10:00 p.m. on Sunday. No on-site sales and consumption are permitted on Monday.
2. Consumption of alcohol is prohibited outside the exterior walls of the building.
3. Live music is not permitted after 9:00 p.m. on Sunday through Thursday and after 10:00 p.m. Friday and Saturday.
4. All live music performances must comply with City of Salisbury noise ordinance requirements.
5. On-site alcohol sale is limited to beer and wine only.
6. Security shall be provided during live music events by licensed security personnel.

Mayor Heggins asked the applicant if it was her desire to remove the condition regarding live music not being permitted after 9:00 p.m. and if the applicant would follow the noise ordinance. Ms. Demers agreed and requested there be no 9:00 p.m. time restriction related to live music.

Councilmember Alexander, Mayor Pro Tem Post, and Councilmember Sheffield suggested keeping the condition that relates to live music not being permitted after 9:00 p.m. Councilmember Sheffield then suggested that the applicant's request was in relation to the open mic events definition. Councilmember Miller asked if the ordinance governs live music or alcohol sales. Mr. Corriher commented if Grievous Gallery opened on Mondays the permit would require that the business not sale alcohol on Monday.

Ms. Demers asked if open mic night security would need to be clarified. Councilmember Miller suggested the owners work with the Police Department to determine what security is appropriate.

Ms. Barringer clarified that the establishment, under the current business operation, would only have to comply with the noise ordinance with the City of Salisbury. She commented there are no restrictions related to hours unless complaints are received. She clarified Grievous Gallery's special use request is for alcohol consumption.

Mayor Heggins and Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

Councilmember Sheffield commented the SUP is a good example of mixed-use and adaptive space, and she added she is confident that the Grievous Gallery owners will be good neighbors. She thanked the Planning Department for its work, and she requested a review of the

LDO to create categories and the restrictions that keep an SUP with the land versus the owner. Mayor Pro Tem Post agreed.

BOARDS AND COMMISSIONS

Mayor Heggins commented there are two vacant seats on the Fair Housing Committee and three applicants have received the same number of recommendations by Council.

Councilmember Miller asked City Clerk Diane Gilmore to send information of the three applicants to Council and to note how many seats are vacant on the Fair Housing Committee has. He suggested Council recommend applicants for the vacant seats with a deadline for Council members to respond.

Mayor Pro Tem Post commented Mr. Randy Reamer indicated he would continue to serve as an Extraterritorial jurisdiction (ETJ) member on the Planning Board until June. City Attorney Graham Corriher commented Interim Planning Director Brian Hiatt sent a letter to all the individuals located within the ETJ limits of Salisbury stating the City is looking for potential members and soliciting applications.

Mr. Hiatt clarified staff generated a list of potential ETJ members that reside within the jurisdiction, and letters were sent to selective residents from Planning Board recommendations. He stated if no responses are received the Planning Board a letter would then be sent to all residents within the ETJ limits.

CITY ATTORNEY'S REPORT

(a) Ordinance Amendments Chapter 22, Article V – Demonstrations

City Attorney Graham Corriher commented a Council committee that included Mayor Pro Tem Post and Councilmember Miller met 13 times. He noted May 4, 2018 was the last time the committee met and recommendations were made to Council for its consideration. Mr. Corriher stated the meetings were well attended and a Police Department representative was present to provide feedback. He noted the goals were to make the ordinance legally compliant, clear, and user-friendly. He stated after the meetings and revisions were posted online he did not receive any calls or feedback.

Mr. Corriher reviewed amendments made to Chapter 22, Article V, of the Code relating to demonstrations. He pointed out the removal of older definitions that were not necessary 'parades, picket lines, and group' for Article V because some of the content was dated and the Special Event Permit Ordinance controls other items. He stated a revision was made to include a definition of a demonstration as any assembly in a public place regardless of size. He noted Group demonstration is defined as any demonstration that involves 10 or more people and requires a permit.

Mr. Corriher noted Section 22-125 was revised to prohibit physical interference of another demonstration. He noted both groups of demonstrators have a right to be in the presence of one another but do not have the right to interfere with the other demonstration.

Mr. Corriher commented revisions were made to update the language in Section 22-126 relating to weapons to include a list of weapons that would be prohibited during a demonstration.

Mr. Corriher stated the Picketing Section was removed from Chapter 22. He commented a permit is not required for a demonstration consisting of nine or fewer people. He noted unplanned demonstrations that are in response to a major news event, regardless of size, do not require a permit because the group could be considered a spontaneous group exception. He indicated Section 22-147 relates to the issuance of a permit that was restricted and revisions state that the City Manager or its designee is the person that considers and issues permits.

Mr. Corriher indicated Section 22-148 related to fees has been removed. He pointed out the restrictions of discretion relating to First Amendment rights, and he added there is some discretion regarding policing and permitting but it is content neutral and the message should not be considered. Mr. Corriher commented if a permit is denied the Chief of Police would provide alternatives within the application process, and alternative locations would be provided if possible.

Mayor Pro Tem Post asked who provides the alternatives. Mr. Corriher noted if there are major events that require Police department resources then the Police department will work with the applicant for an alternative location.

Mr. Corriher pointed out Section 22-150 relates to the appeal of a decision to reject or revoke a permit, and he added if there is an issue with a 48-hour permit then the applicant would have recourse through the superior court. He clarified appeals are made to the City Council, and he added Council meets twice a month. Mayor Pro Tem Post commented the section suggests when to file an appeal but it does not state that the City Manager or City Council has to respond to the appeal within any time frame, and he suggested including a time frame. Mr. Corriher noted response times can be included, and he suggested the City Manager provide a response within 10 days of an appeal with a 30 day response time from Council meetings.

Councilmember Sheffield asked if a group that voices its opposition during an event which has a permit would relate to Section 22-125 indicating that no persons shall hamper, obstruct, impede, or interfere with any event with a permit holder. Mr. Corriher stated it would depend and the Police department would need to determine whether the conduct, not the message, infringes on First Amendment rights. Councilmember Miller commented the committee's goal was to hold First Amendment rights in high regard and also provide protection for public safety. He commented demonstrations can be unplanned without a permit, but he encouraged demonstrators to file for a permit so that the City can be prepared. He indicated fees have been waived, and he noted demonstrators cannot impede on someone's access to a business and demonstrations cannot be conducted in the streets.

Councilmembers Sheffield asked about Section 22-146 regarding the management of groups consisting of fewer than nine people if there is more than one group. Mr. Corriher indicated

discretion by the Police department would be required to protect permitted events and people demonstrating their First Amendment right.

(b) Mayor Heggins convened a public hearing, after due notice thereof, to receive comments regarding Ordinance revisions to Chapter 22, Article V of the Code relating to demonstrations.

There being no one to address Council, Mayor Heggins closed the public hearing.

Thereupon, Mayor Pro Tem Post made a **motion** to adopt an Ordinance amending Chapter 22, Article V, of the Code of the City of Salisbury, North Carolina, relating to demonstrations. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

ORDINANCE AMENDING CHAPTER 22, ARTICLE V, OF THE CODE OF THE CITY OF SALISBURY, RELATING TO DEMONSTRATIONS.

(The above Ordinance is recorded in full in Ordinance Book No. 28 at Pages No. 135-140, and is known as Ordinance 2019-21.)

(b) Ordinance Amendment Chapter 14, Article III – Noise

City Attorney Graham Corriher commented he and Police Chief Jerry Stokes reviewed the Noise Ordinance and agreed that the fairest way to draft and implement a noise ordinance is to use decibel levels City-wide and by zoning districts. He noted it is difficult to control sound levels that affect zonings that are side-by-side. He stated purchases to upgrade equipment to measure sound and conduct officer training are needed. He noted Chief Stokes has previous training with decibel systems and how to transition from a system that cannot be edited to a decibel level system.

Mr. Corriher proposed keeping the current Ordinance in place and removing Section 14-61 relating to the use of a loudspeaker or similar device for merchandising. He noted there are First Amendment speech issues related to the establishment of religion-related issues. He added the existing ordinance can be enforced without provisions.

Mr. Corriher stated Section 14-64 related to unreasonable sound amplification was removed because it created a standard that was difficult to enforce. He commented he believes it could be subjective on many factors and the 50 foot restriction should be removed.

Mr. Corriher commented the remaining noise ordinance is subjective and tied to reasonable person standards which is constitutionally permissible. He indicated the current ordinance is permissible as it stands with the current revisions, and he suggested adopting the revisions as a place holder until he can provide Council a more accurate ordinance for its consideration.

Councilmember Miller referenced a noise ordinance issue regarding DJ's restaurant and its loud music, and he asked if the proposed ordinance would allow the City to enforce that particular use. Mr. Corriher agreed.

Councilmember Alexander asked if the noise ordinance would affect all places that play live music throughout the City. Mr. Corriher commented the noise ordinance would be controlled City-wide and it would depend on where a business is located, if decibels are exceeding maximum noise levels, and if the business is operating within its specifications. He noted live music uses would need to be considered to determine what decibel level would be appropriate.

Councilmember Miller asked if it would be appropriate for the Planning Board to review the noise ordinance. Mr. Corriher commented the noise ordinance is not under the LDO so he does not believe it would be appropriate. He suggested he and Police Chief Stokes work on the noise ordinance and then present their suggestions to Council for its consideration. Councilmember Miller agreed.

Councilmember Alexander asked if a draft noise ordinance would be posted online for citizens to review. Mr. Corriher commented he would like an opportunity to present Council an updated noise ordinance before it is posted online to invite the public to provide feedback during a Council meeting. Councilmember Miller suggested presenting the ordinance draft one-on-one with Councilmembers for individual feedback and then present a complete draft ordinance at a Council meeting.

Councilmember Sheffield asked where a loudspeaker such as a bullhorn would be addressed if Section 14-64 is removed because Section 14-62 only addresses an amplifier or loudspeaker that is located on a vehicle. Mr. Corriher commented the violation would refer to excessive noise in section 14-46.

Thereupon, Councilmember Miller made a **motion** to adopt an Ordinance amending Chapter 14, Article III, of the Code of the City of Salisbury relating to noise. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, Miller, and Sheffield voted AYE. (5-0)

ORDINANCE AMENDING CHAPTER 14, ARTICLE III, OF THE CODE OF THE CITY OF SALISBURY, RELATING TO NOISE.

(The above Ordinance is recorded in full in Ordinance Book No. 28 at Pages No. 141-146, and is known as Ordinance 2019-22.)

ANNOUNCEMENTS

Communications Director Linda McElroy announced the City will host the Summer Youth Employment Program for six weeks this summer. She stated this is an excellent chance for students to gain work experience and learn more about local government. Participants must be a full-time student (high school or college), live within the City limits, meet income guidelines as specified by the United States Housing and Urban Development (HUD), provide proof of family income, and be at least 16 years of age. Participants are able to commute to work via the City bus for free with their City Identification Card. Apply online today at www.salisburync.gov.

Communications Director Linda McElroy announced the Public Services Department would like to advise citizens of the upcoming Spring Spruce Up Week, April 22-26, 2019. This week is designated for residents who have City of Salisbury garbage services. She stated this service is for residents only, no businesses. Items must be placed at the curb no later than 7:00 a.m. of your regular garbage collection day. Acceptable items include extra bags and boxes of trash and household items, furniture, mattresses and box springs, appliances, and tires without rims (limit five per address). The City is unable to collect TVs, computers, or electronics. You may contact the Rowan County Recycling Center to inquire about the disposal of these items. The City is unable to collect building materials of any kind including carpet, padding, sheetrock, lumber, shingles, sinks, or toilets. Inquiries regarding disposal of these items may be directed to the Rowan County Landfill. For additional information, you may refer to the City website at www.salisburync.gov click on Government, Public Services, and Waste Collection or call 704-638-5260.

Communications Director Linda McElroy announced the Parks and Recreation Department will host its annual Middle School Prom Saturday, May 11, 2019 from 6:00 p.m. until 9:00 p.m. at the Civic Center. All middle school students in Rowan County are welcome to enjoy an evening of dancing, photos and a good time with friends. Refreshments will be served and photo packages will be available for purchase. Tickets are limited and must be purchased in advance. For more information or to purchase tickets please call 704-216-PLAY.

Communications Director Linda McElroy announced the City of Salisbury and Cheerwine are teaming up to host the 2019 Cheerwine Festival. The free event will take place on Saturday, May 18, 2019, in downtown Salisbury from noon until 10:00 p.m. Cheerwine fans will enjoy ice cold Cheerwine, live music, great Southern food, shopping for Cheerwine merchandise, family-friendly activities, a beer garden, and local craft vendors. For more information, please call 704-216-PLAY.

Communications Director Linda McElroy announced the Dixonville-Lincoln Memorial Project Task Force will host "Ministers of Comedy and Judges" Thursday, April 25, 2019 at the Salisbury Civic Center. Doors open at 6:00 p.m., event begins at 6:30 p.m. Come laugh with the community, local pastors and judges. Tickets are \$10. To purchase tickets please call 704-252-1630 or 704-645-8710. Tickets will also be available at the door. Ticket sales will benefit the Dixonville-Lincoln Memorial. The event is open to the public.

Communications Director Linda McElroy announced due to postponement and rescheduling, Salisbury Parks and Recreation will now host its 13th annual Touch a Truck event on Saturday, May 4, 2019 from 10:00 a.m. to 1:00 p.m. at City Hall. Participants of all ages will have a hands-on, up-close and personal, educational experience with a wide variety of vehicles and occupations. Cameras are highly recommended. This event is free and open to the public. For more information, please call (704) 216-PLAY.

COUNCIL COMMENTS

Councilmember Sheffield commented she attended Gray Stone Day School's senior project presentations, and she noted the students did a great job. She added she invited the senior students to attend a Council meeting to share their work during public comment.

Councilmember Sheffield requested a follow up from the Historic Salisbury Foundation (HSF) regarding the house on 1408 Fulton Street. She also requested a timeline regarding the purchase of the house and the commitments made during the Fulton Heights Neighborhood Association's meeting to secure the building and add lights in the back for safety. City Attorney Graham Corriher noted he will work with Interim Planning Director Brian Hiatt for information regarding 1408 Fulton Street.

MAYOR PRO TEM COMMENTS

Mayor Pro Tem Post stated he attended the Re-Entry Simulation. He noted another session of the Re-Entry Simulation will be conducted by the Police Department. He commented it was difficult to participate, in and he recommended everyone take part in the next simulation. He pointed out the ones who conducted the simulation did great work and it is a way to put resources in place to assist in re-entry.

Mayor Pro Tem Post commented he spoke at the Community Broadband Annual Conference in Austin, Texas. He noted cities that do not have broadband have a difficult time attracting people to live and work in the City. He added two models are being used nationwide that include building or leasing broadband systems or using open systems to allow any one access to the system. He pointed out he received many questions regarding what Salisbury is doing with its broadband. He shared the advantages of the lease to Hotwire compared to other leases other cities are facing.

Councilmember Alexander requested an update regarding payments from Hotwire to the City. City Manager Lane Bailey noted quarterly payments will be included in the next quarterly financial report, and he noted the first quarter still included contracts with providers being paid. He commented he recently spoke with Hotwire regarding the second quarter payment.

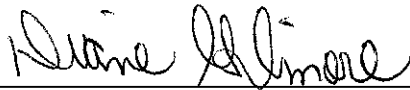
Mayor Heggins congratulated Mayor Pro Tem Post for representing the City at the Broadband Annual Conference.

Mayor Heggins announced the Mayor's Spirit Forum will take place April 30, 2019 from 6:00 p.m. until 8:00 p.m. at City Hall in Council Chambers. She indicated this year's theme is a continuation of "Faith in Action: Speaking Truth to Power." She noted the forum will feature a panel discussion by faith leaders from different backgrounds. She commented faith leaders will discuss the intersection of faith and social justice and highlight the role of leaders to lead civil discourse about difficult and sensitive issues faced by society and policy makers.

Mayor Heggins thanked staff for the work they do and for supporting Council. She thanked Council for their work.

ADJOURNMENT

Motion to adjourn the meeting was made by Councilmember Miller. All Council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 9:52 p.m.



Diane Gilmore, City Clerk



Al Heggins, Mayor